

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2019-081
September 13, 2019

SUBJECT: CANNABIS POLICY, GUIDANCE AND PROCEDURES

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2), (3), and (11) of the District of Columbia Home Rule Act, 87 Stat. 790, Pub. L. No. 93-198, D.C. Official Code § 1-204.22(2), (3), and (11) (2016 Repl.), it is hereby **ORDERED** that:

I. PURPOSES

The purposes of this Order are:

- A. To update and clarify the responsibilities of District government agencies in conforming to laws, in setting rules, in communicating such rules and laws to their employees, and in establishing practices and appropriate discipline to enforce such laws and rules relating to cannabis use, while allowing employees maximum freedom to use cannabis in ways that are legal under District law so long as the use does not endanger themselves or others at work, impair their productivity or ability to effectively and efficiently perform their work, impair the productivity of District workplaces, or endanger members of the public or clients or customers entrusted to their care; and
- B. To improve understanding on the part of District government employees, contractors, and grantees, regarding their ability to use cannabis under District law without jeopardizing their positions.

II. AFFECTED AGENCIES AND INDIVIDUALS

- A. This Order shall apply to all District government agencies under the direct administrative authority of the Mayor, including agencies whose personnel authority does not report to the Department of Human Resources (“**DCHR**”).
- B. Agencies not under the direct administrative authority of the Mayor are encouraged to adopt regulations, policies, and procedures consistent with this Order, to ensure that its employees are given notice of agency policies and any designations relating to safety or testing regimes that apply to particular employees, and that any testing regimes are carried out fairly and transparently.

III. VALUES

- A. Public service is a public trust, and the public must feel safe and secure when entrusting the District government to provide services. Such services must be delivered in a safe, effective, and efficient manner, and safety, effectiveness, and efficiency can be compromised if an employee is intoxicated or impaired.
- B. The District government values its employees and understands that there is a large cost to employees and agencies when employees lose their jobs due to positive drug tests.
- C. The District government believes in progressive discipline for all but the most serious offenses.
- D. The District government does not endorse the use of cannabis as a healthful activity, any more than it endorses alcohol or tobacco use, but it recognizes that there is a sphere of personal freedom for adult employees, who are allowed under District law to possess and use cannabis.
- E. The District government respects the recommendations of medical professionals who recommend the use of medical marijuana for the treatment of various conditions.
- F. The District government has and maintains strong policies against being intoxicated at work, whether or not the intoxicant was recommended for a medical condition.
- G. District government employees owe the District and its residents their best efforts at work, efforts that can be impaired by cannabis use, and such impairment may extend beyond the time of initial intoxication.
- H. The District government provides leave to its employees; therefore, employees with medical conditions warranting the use of cannabis during the work day may take sick leave, or any other type of leave, with the approval of their supervisor, rather than being impaired by cannabis during a shift.
- I. District government agencies and employees are obligated by the Code of Conduct to adhere to all applicable federal and District laws regarding employment.
- J. Many District government employees hold positions of such sensitivity that any impairment could threaten the safety of themselves or others.
- K. Similarly-situated employees across District government agencies should be treated in a similar manner.

IV. POLICIES AND PROCEDURES

A. Employment Categorizations.

1. Title 6-B of the District of Columbia Municipal Regulations (“**DCMR**”) establishes an enhanced suitability tiered system of drug and alcohol testing based upon three (3) categories of employees: safety-sensitive, protection-sensitive, and security-sensitive.
2. Safety-sensitive positions are subject to heightened suitability standards, including pre-employment and random drug and alcohol testing, because employees occupying those positions could cause permanent physical injury or loss of life if under the influence of or impaired by drugs or alcohol.
3. Protection-sensitive positions are subject to heightened suitability standards, including pre-employment drug and alcohol testing, because employees occupying those positions carry out duties or responsibilities that involve caring for patients or other vulnerable persons.
4. Employees in security-sensitive positions and all other District employees are subject to drug and alcohol testing when there is a reasonable suspicion that the employee, while on duty, is impaired or otherwise under the influence of a drug or alcohol. Such employees are also subject to post-incident and post-accident drug and alcohol testing.

B. Designation of Safety-, Protection-, and Security-Sensitive Positions.

1. In order to properly implement the District’s alcohol and drug testing requirements, agencies shall properly designate employment positions as safety-sensitive, protection-sensitive, and security-sensitive according to their job functions.
2. By October 30, 2019, and annually thereafter by September 30, each agency shall review and designate which positions in the agency are safety-sensitive, protection-sensitive, and security-sensitive consistent with Chapter 4 of Title 6-B of the DCMR. The roster of designations shall be approved by the agency’s head of human resources, general counsel, and director. Thereafter, the roster shall be delivered to the agency’s personnel authority for final approval.
3. An agency shall not automatically designate every position in the agency as safety-sensitive. Instead, the agency must consider individually each type of position at the agency and shall, when determining whether to designate the position as safety-sensitive, consider such factors as:

- a. Whether the position requires or may involve carrying a firearm;
- b. Whether the position involves direct contact with, is entrusted with the direct care and custody of, and may affect the health, welfare, or safety of children or youth, or of other vulnerable persons;
- c. Whether the position involves work in a facility or residence where contraband including cannabis is strictly prohibited;
- d. Whether the duties of the position require periods of such continuous and careful attention that any impairment caused by drugs or alcohol could lead to a lapse of attention that could cause actual, immediate, and permanent physical injury or loss of life to self or others;
- e. Whether the position involves, but is not limited to, driving or operating large trucks, heavy or power machinery, or mass transit vehicles; and
- f. Whether the employees or positions are required by law to undergo drug testing (a "legally regulated position"), including but not limited employees or positions required to undergo drug testing under the Comprehensive Drug Abuse Prevention and Control Act of 1970, approved October 27, 1970, Pub. L. 91-513, 84 Stat. 1236, 21 U.S.C. § 801 *et seq.*; commercial motor vehicle operators under 49 U.S.C. § 31306 *et seq.*; and air carrier employees under 49 U.S.C. § 45102.

C. Notice and Acknowledgment.

1. An employee in a position designated as safety-sensitive or in a legally regulated position shall be provided a notice stating that his or her position is safety-sensitive and/or a legally regulated position and he or she is subject to random drug testing, including for the presence of cannabinoids.
2. The notice required by this subsection shall be provided before or upon hiring and annually thereafter to each employee or applicant in a safety-sensitive designated position or in a position that is legally regulated. If such a notice has already been provided to the employee in Fiscal Year 2019, the agency is not required to provide an additional notice of the designation to the employee during Fiscal Year 2019.
3. Each notice provided to an employee under this subsection shall include an acknowledgement of receipt, which shall be signed by the employee.

- D. **Grantee and Contractor Warrants.** Grantees and contractors receiving federal funds through District agencies and/or programs must warrant that they are in compliance with applicable federal laws relating to drugs, including cannabis. Agencies that receive federal funds must comply with the federal Drug-Free Workplace Act, 41 U.S.C. § 8101 *et seq.* While the Drug-Free Workplace Act does not require drug testing, agencies shall require their contractors and grantees to adhere to suspicion-based and post-accident and post-incident testing protocols established by the District.
- E. **Pre-Employment Drug Testing.**
1. Applicants for safety-sensitive and protection-sensitive positions are subject to pre-employment drug testing. Applicants for safety-sensitive positions may be disqualified based on the presence of cannabinoids, even if the applicant possesses a medical card authorizing the use of medical marijuana. Applicants for protection-sensitive positions may not be disqualified based on the presence of cannabinoids, unless the applicant is in possession of, or impaired by, cannabis at the time of testing.
 2. If an applicant for a safety-sensitive position fails the drug test based only on the presence of cannabinoids, the personnel authority or hiring agency shall provide a second opportunity to take a drug test at least two (2) weeks after the initial test results have been provided. Notwithstanding the foregoing, the hiring agency shall not be required to provide the applicant a second opportunity to take a drug test if the agency determines it is necessary to immediately fill the position for operational needs, and the determination is approved by the personnel authority, or the test results show that the level of cannabinoids detected in the initial drug test indicates impairment at the time of testing.
 3. An applicant for a safety-sensitive position who fails a second drug test shall be barred from applying for another safety-sensitive position in District government for a year from the date of the applicant's second test. The applicant may also be subject to further disqualification from the position pursuant to federal law. However, the applicant may apply for a non-safety sensitive position in the District government at any time.
 4. If an applicant discloses recent cannabis use, an agency director may, but is not required to, postpone when the drug test will take place.
 5. Each vacancy announcement for a safety-sensitive position shall clearly articulate that the position is subject to pre-employment drug testing for cannabis and that failing the drug test could result in disqualification, even if the applicant possesses a medical card authorizing the use of medical marijuana.

F. Drug Testing of Employees.

1. Safety-sensitive employees are subject to drug testing on a random basis, upon reasonable suspicion, or after an accident or incident.
2. Employees who are not in a safety-sensitive position will be tested for drugs only upon reasonable suspicion, or after an accident or incident. Thus, those employees not in safety-sensitive positions may find that they can use cannabis, with or without a medical card authorizing the use of medical marijuana, so long as they are not impaired at work.
3. An employee subject to drug testing, whether the testing is random for a safety sensitive position, reasonable-suspicion-based, or post-accident or post-incident, must promptly provide a specimen upon referral for a drug test. As set forth in Chapter 4 of Title 6-B of the DCMR, specimens will be sent to qualified laboratories for analysis and certification of results. If a "higher-quality impairment test" is available, the employee may request that the higher-quality impairment test be conducted at the same time or immediately before he or she provides a specimen for review. (For example, if an employee has recently used cannabis for medical purposes or adult-use purposes, and the employee believes that the drug test may result in a positive result for cannabis but the employee believes he or she is not impaired, the employee may request the higher-quality impairment test.)
4. If any employee tests positive for an unlawful or unauthorized drug, including cannabis, the medical review officer (MRO) shall contact the employee to determine whether the employee has taken any medication that would explain the positive result. If the positive result is consistent with the employee's valid prescription or recommendation for cannabis products pursuant to a medical marijuana program in the District, or an out-of-state program with which the District has reciprocity and where the employee lives, the reporting agency may excuse the positive result if the level of THC metabolites is too low to indicate impairment or if the test results indicate that the employee has only used CBD.
5. If the test result is consistent with a valid prescription or recommendation for cannabis, but the level of cannabis use or timing of cannabis use under the prescription or recommendation may impair the employee physically or intellectually while at work, the employee shall be counseled regarding the options to take leave until the impairment-causing use is no longer necessary.
6. An employee who tests positive for cannabis, even with a prescription or recommendation through a medical marijuana program recognized under

paragraph 4, shall be presumed to be impaired by the use of cannabis if the test was a reasonable-suspicion-based or post-accident or post-incident test. That presumption may be overcome by the employee if the employee presents clear and convincing evidence that he or she was not impaired at the time of the test. Clear and convincing evidence may consist of passing a higher quality impairment test, if such a test is available and taken immediately before or after the employee provides a specimen for the District government's test, as provided in paragraph 3 of this section. An employee may also attempt to overcome this presumption by demonstrating that the medication the employee uses is limited to CBD with only trace amounts of THC, or that the employee's use was so remote in time from when the employee reported for duty as to not present a risk of impairment.

7. Safety-sensitive employees who test positive for cannabis will be presumed to be in violation of relevant District and/or federal laws and policies regarding employment and the use of drugs, including the Child and Youth, Safety and Health Omnibus Amendment Act of 2004 effective April 13, 2005, D.C. Law 15-353; D.C. Official Code § 4-1501.01 *et seq.*, and/or other District or federal laws providing for a drug-free workplace or protecting safety and health. That presumption can be overcome through clear and convincing evidence as provided in paragraph 3 and 6 of this section but an initial positive test result is a violation of this Order. Clear and convincing evidence may not be sufficient to overcome the presumption of violating federal laws and regulations while employed in a legally regulated position.
8. No employee shall be forced to take a blood test for the presence of cannabis, except as may be required by law following an accident or incident.

- G. **Progressive discipline.** As provided in Title 6-B of the DCMR, agencies shall adhere to principles of progressive discipline, unless otherwise negotiated in a collective bargaining agreement (or as otherwise provided in Title 6-B), as they strive to maintain drug-free workplaces, to ensure that employees are not impaired on the job, and to retain valuable workers who may use cannabis in their off-work hours. Reporting for duty while impaired by or testing positive for an illegal drug or unauthorized controlled substance currently subjects an employee to suspension or removal for a first offense, and to removal for a subsequent occurrence under Chapter 16 of Title 6-B of the DCMR, and specifically, the Table of Illustrative Actions in Section 1607 of Title 6-B of the DCMR. Those penalties apply to employees with and without medical cards authorizing the use of medical marijuana, including employees in positions that are not safety-sensitive positions.

- H. **Agency Response to Employee Acknowledgment of Cannabis Dependence, Addiction, or Use.**
1. Although the use of cannabis may subject a safety-sensitive employee to separation from employment, the agency should consider alternatives to separation as in other situations of dependence or addiction. An employee may request assistance through the Employee Assistance Program or seek treatment for an addiction to or dependence upon cannabis. An employee in a safety-sensitive position may be authorized to use sick or annual leave or may, with the agency's approval, take leave without pay, temporarily relieved of his or her safety-sensitive functions, or reassigned to a non-safety-sensitive position, while the employee seeks assistance or undergoes treatment.
 2. An employee not in a safety-sensitive position may be allowed, with supervisory approval and at the discretion of the agency, to use leave to attend addiction-assistance programs during the work day, if the employee affirms that he or she is not and will not be impaired by or use cannabis during the work day. The employee may use sick or annual leave, or, with the agency's approval, leave without pay, in order to obtain assistance or treatment for a cannabis addiction.
 3. An employee may inform an agency that he or she uses cannabis when the employee has been notified of an upcoming random drug test or after a positive drug test result. The agency should provide similar opportunities for assistance or treatment to the employee as described in paragraphs 1 and 2 of this section.
 4. Safety- or protection-sensitive employees on leave for the purpose of assistance or treatment for use of cannabis may be given a fitness for duty test before returning to work, including a drug test, and they may be required to submit evidence of successful completion of a program before returning to duty.
- I. **Medical Marijuana Cards.** An agency shall not take adverse employment action against employees or disqualify applicants simply because the employee or applicant has a medical marijuana card. An applicant or employee may have never used the card or may have used cannabis only during a period of leave and never on the job. Thus, it would be unfair to deny employment to an applicant or discipline an employee simply for having a card.
- J. **Hiring of Individuals Previously Removed or Denied Employment for Cannabis Use.** An applicant previously denied employment or an employee removed from his or her position due to a positive cannabis test result or on-duty impairment due to cannabis use is eligible to reapply for jobs in the District government, subject to any limits imposed by federal law. While a former

applicant or employee may be eligible for employment, the applicant is not entitled to be hired, nor entitled to any specific position, pay, or benefits. If an applicant is applying for a job in a safety-sensitive position, and was previously removed from his or her position due to a positive cannabis test result, he or she may be subject to a pre-employment drug test, and evidence of cannabis use shall be disqualifying. If an applicant is applying for a job in a protection-sensitive position, and was previously disqualified from employment due to a positive cannabis test result, he or she may be subject to a pre-employment drug test, and evidence of cannabis use shall be disqualifying unless the applicant provides a valid medical marijuana card.

- K. **Relation to Application of Past Policies.** Applicants previously denied employment and employees subject to discipline or removal under previous District government policies are not provided any rights or entitlement to return to their previous positions, and any values, changes, or policies articulated in this Order may not be relied upon in a grievance or action against the District government as an admission of an error or illegality in a determination made or action taken prior to the effective date of this Order.

V. NEW TECHNOLOGIES IN TESTING

DCHR, in conjunction with the Department of Forensic Sciences, shall investigate whether existing or new technologies and methodologies for testing for the presence of cannabis may be accurately used to determine current impairment from cannabis, rather than simply past use of cannabis, and shall report on the efficacy, validation, and costs of such tests to the City Administrator. The City Administrator shall determine whether such technology is appropriate to implement for District government employees and DCHR shall in turn provide new directives to agencies with personnel authority and alert independent personnel authorities to consider the use of the tests. The duty to keep abreast of technological developments in technologies and methodologies for testing for cannabis impairment is a continuing obligation of DCHR.

VI. IMPLEMENTATION

- A. The Department of Human Resources (“DCHR”) shall amend the District’s personnel regulations (Title 6-B of the DCMR) and its policies and procedures as necessary, to conform to the provisions of this Order in accordance with its delegated authority pursuant to Mayor’s Order 2008-92, dated June 26, 2008.
- B. Each agency subject to this Order shall implement policies and procedures consistent with this Order.
- C. Each agency that receives a federal grant shall seek guidance from its grantor agency and implement any additional policies that may be mandated by federal law or the grantor agency. The additional policies shall be communicated to all affected employees and acknowledged by affected employees on an annual basis.

- D. All agencies, including those with personnel authority independent of the Director of the Department of Human Resources, shall provide a copy of their policies and procedures related to drug use and drug testing to the Director of DCHR. DCHR shall report to the City Administrator on whether the policies and procedures of the agencies are in compliance with this Order.
- E. DCHR shall continue to develop specialized training materials for managers on suspicion of intoxication or impairment at work, including impairment from cannabis, alcohol, prescription medications, and controlled substances, and the procedures for obtaining testing, and continue to provide such training on a regular basis, with updates as technology evolves.

VII. RESCISSION

Any prior personnel policies or Mayor's Orders inconsistent with this policy shall be rescinded upon implementation of policies that flow from this Order, and to the greatest possible extent, the policies articulated by this Order and notices required by it shall be adopted forthwith.

VIII. EFFECTIVE DATE:

- A. This Order shall become effective immediately.
- B. This Order shall not take effect for an employee under a collective bargaining agreement for at least ninety (90) days to allow for their exclusive representative to engage in impact and effects bargaining.


MURIEL BOWSER
MAYOR

ATTEST: 
KIMBERLY A. BASSETT
SECRETARY OF STATE OF THE DISTRICT OF COLUMBIA